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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID HOUGH; *et al.*

Plaintiffs,

vs.

RYAN CARROLL; *et al.*

Defendants.

) Case No.: 2:24-cv-02886-WLH

) **PLAINTIFFS' OPPOSITION TO**
) **WHOLESALE UNIVERSE AND**
) **BONNIE NICHOLS' MOTION TO**
) **DISMISS**

) Presiding Judge: Hon. Wesley L. Hsu

) Hearing: January 10, 2024, 1:30 pm

) Trial Date: N/A
)

**PLAINTIFFS' OPPOSITION TO WHOLESALE UNIVERSE AND BONNIE
NICHOLS' MOTION TO DISMISS**

1 Plaintiffs submit this Opposition to Wholesale Universe and Bonnie Nichols'
2 (hereinafter, "Defendants") Motion to Dismiss (hereinafter, the "Motion"):

3
4 **SUMMARY**

5 Wealth Assistants' fraudulent scheme included asking its clients to send
6 "inventory capital" to stock the clients' stores. Unbeknownst to Plaintiffs, Wealth
7 Assistants was sending many of its clients' inventory capital to Bonnie Nichols'
8 company, Wholesale Universe. Nichols and Wholesale Universe claim that they
9 intended to use that money to supply inventory to the clients' stores, but Nichols and
10 Wholesale Universe did not use most of the money they received from Wealth
11 Assistants for that purpose. Nichols and Wholesale Universe kept the money for
12 themselves instead.

13
14 When Wealth Assistants shut down, Nichols and Wholesale Universe
15 contacted the clients to offer to return the inventory capital, but they rarely followed
16 through on that offer. They made excuses instead. In summary, Nichols and
17 Wholesale Universe's purported inventory-supply services were a ruse like the rest of
18 Wealth Assistants.

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20 In carrying out that fraudulent scheme, Wholesale Universe intentionally
21 targeted two Plaintiffs and many other California residents. That theft from many
22 Californians is more than enough to subject Wholesale Universe to the Court's
23 personal jurisdiction.
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BACKGROUND

Wealth Assistants obtained more than \$50 million by defrauding more than 600 individuals. Specifically, Wealth Assistants advertised that it would provide its clients with substantial income by setting up and managing lucrative online Amazon stores that the clients would own. But Wealth Assistants did not provide the promised services. Instead, it stole almost all of the money it collected from Plaintiffs and its other clients by fraudulently transferring the money to its principals and affiliates before declaring bankruptcy. (ECF 173 (“SAC”), ¶ 16-24).

Wealth Assistants’ fraudulent scheme stole more than \$1 million from California residents. (SAC, ¶ 3). Plaintiffs in this case are five California residents who are Wealth Assistants’ former clients. (SAC, ¶ 35-38).

As discussed in more detail below, Defendants Bonnie Nichols and her company Wholesale Universe played an integral role in Wealth Assistants’ scheme and continued to run a similar fraudulent scheme after Wealth Assistants went out of business.

LEGAL STANDARD

In adjudicating a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), for lack of personal jurisdiction, a court must take as true all uncontroverted allegations in the Amended Complaint and resolve all genuine disputes in the plaintiff’s favor. *LNS Enters. v. Cont’l Motors, Inc.*, 22 F.4th 852, 858 (9th Cir. 2022). If both sides submit affidavits, then conflicts between the parties over statements contained in affidavits

1 must be resolved in the plaintiff's favor. *LNS Enters. v. Cont'l Motors, Inc.*, 22 F.4th
2 852, 858 (9th Cir. 2022).

3 Fed. R. Civ. P. 4(k)(1)(a) provides that a federal court has personal jurisdiction
4 over a party whenever a state court in the state where the federal court is located would
5 have personal jurisdiction over that party. California courts, in turn, may exercise
6 jurisdiction on any basis consistent with the Constitution of California and the United
7 States. Cal. Code Civ. Proc. § 410.10. The exercise of jurisdiction over a nonresident
8 defendant comports with these Constitutions if the defendant has such minimum
9 contacts with the state that the assertion of jurisdiction does not violate traditional
10 notions of fair play and substantial justice. *Snowney v. Harrah's Entertainment, Inc.*,
11 35 Cal.4th 1054, 1061 (Cal. 2005).
12

13 Courts use the following three-part test to analyze whether a party's "minimum
14 contacts" meet the due process standard for the exercise of specific personal
15 jurisdiction: (1) The non-resident defendant must purposefully direct his activities or
16 consummate some transaction with the forum or resident thereof; or perform some act
17 by which he purposefully avails himself of the privilege of conducting activities in the
18 forum, thereby invoking the benefits and protections of its laws (the "purposeful
19 direction or availment requirement"); (2) the claim must be one which arises out of or
20 relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction
21 must comport with fair play and substantial justice, *i.e.* it must be reasonable. *Learjet,*
22 *Inc. v. Oneok, Inc.*, 715 F.3d 716, 741-42 (9th Cir. 2013).
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1 “[T]he purposeful direction or availment requirement for specific jurisdiction is
2 analyzed in intentional tort cases under the ‘effects’ test” that is derived from *Calder*
3 *v. Jones*, 465 U.S. 783, (1984). *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir.
4 2002). That test has three requirements: the defendant allegedly must have (1)
5 committed an intentional act; (2) expressly aimed at the forum state; (3) causing harm
6 that the defendant knows is likely to be suffered in the forum state. *Yahoo! Inc. v. La*
7 *Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006).

10 Notably, with respect to the third prong (“causing harm...”), some district courts
11 in the Ninth Circuit used to apply a rule that the “*brunt* of the harm which is suffered”
12 from the defendant’s conduct must have been suffered in the forum state. *Id.* (emphasis
13 added) (citing *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482 (9th Cir. 1993)).
14 However, the Ninth Circuit expressly rejected that test and held that “[i]f a
15 jurisdictionally sufficient amount of harm is suffered in the forum state, it does not
16 matter that even more harm might have been suffered in another state.” *Id.* at 1207. For
17 example, online sales to California residents totaling \$325,000 easily satisfy that
18 “jurisdictionally sufficient amount of harm” requirement, even if the non-resident
19 defendant sells nationwide and has no additional contact with California. *Thurston v.*
20 *Fairfield Collectibles of Ga., LLC*, 53 Cal.App.5th 1231, 1240 (Cal. Ct. App. 2020).

25 “[P]urposeful availment is satisfied even by a defendant ‘whose only ‘contact’
26 with the forum state is the ‘purposeful direction’ of a foreign act having effect in the
27 forum state.’” *Dole*, 303 F.3d at 1111 (quoting *Haisten v. Grass Valley Med.*
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1 *Reimbursement Fund*, 784 F.2d 1392, 1397 (9th Cir. 1986)); *Brainerd v. Governors of*
2 *the Univ. of Alta.*, 873 F.2d 1257, 1260 (9th Cir.1989) (noting that it is easier for a
3 plaintiff to meet the purposeful direction or availment requirement in a case involving
4 an intentional tort than in a case involving negligence because in intentional-tort cases
5 the “acts are performed for the very purpose of having their consequences felt in the
6 forum state.”); *Columbia Pictures Television v. Krypton Broadcasting of Birmingham,*
7 *Inc.*, 106 F.3d 284, 289 (9th Cir. 1997) (finding personal jurisdiction over defendant
8 Feltner where plaintiff Columbia alleged that Feltner was the owner of television
9 stations in the southeast that continued to broadcast Columbia-licensed shows after
10 failing to pay that company royalties; the fact that Feltner *knew* the impact of his willful
11 violation would be felt in California was “sufficient to satisfy the ‘purposeful
12 availment’ requirement.”).

17 ARGUMENT

18 **A. Bonnie Nichols and Wholesale Universe Profited By Helping Wealth** 19 **Assistants Defraud Plaintiffs And Other California Residents**

20 Bonnie Nichols is the sole owner and controller of Wholesale Universe.
21 Neither Nichols nor Wholesale Universe are California residents, but while
22 intentionally participating in Wealth Assistants’ scheme to defraud, they intentionally
23 targeted Plaintiffs Michael Nibarger, Amund Thompson, and many other California
24 residents.
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27 More specifically, Wholesale Universe—speaking through Bonnie Nichols—
28 has stated that it came “onboard” Wealth Assistants around July of 2023. (SAC, ¶

1 137). Around that time, Wealth Assistants sent Nichols and Wholesale Universe at
2 least \$1 million. (SAC, ¶ 136). According to Nichols, that money was inventory
3 capital that Wealth Assistants' clients transferred to Wealth Assistants to stock the
4 clients' stores with inventory. (SAC, ¶ 137). Wealth Assistants, in turn, purportedly
5 transferred that inventory capital to Wholesale Universe as a purchase of inventory
6 for specified clients' stores (without telling the clients). (SAC, ¶ 137). Wholesale
7 Universe purportedly accepted responsibility for providing those specific clients with
8 inventory. (SAC, ¶ 137). Those clients included Plaintiffs Michael Nibarger, Amund
9 Thompson, and many other California residents. (*See generally*, Nibarger
10 Declaration; Thompson Declaration).¹

14 Unfortunately, Wholesale Universe did not use the \$1 million it received from
15 Wealth Assistants to stock the clients' stores. Instead, Nichols and Wholesale
16 Universe held most of that money for themselves. (SAC, ¶ 141).

18 **B. Bonnie Nichols And Wholesale Universe Continued Defrauding Plaintiffs**
19 **And Other California Residents After Wealth Assistants Went Out Of**
20 **Business**

21 Wealth Assistants announced it was going out of business on October 23, 2023.
22 (SAC, ¶ 133). At that time, Wealth Assistants' CEO, Defendant Ryan Carroll, sent
23 Wealth Assistants' clients a "Transition Agreement" offer. Specifically, Wealth
24 Assistants offered its clients the opportunity to transition their stores to management
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27 ¹ Exhibit A is referred to herein as the "Nibarger Declaration." Exhibit B is referred to herein as the "Thompson
28 Declaration." Exhibit C is referred to herein as the "Dias Declaration." Exhibit D is referred to herein as the "Tawil
Declaration." Exhibit E is referred to herein as the "Stoops Declaration."

1 by another ecommerce firm on “favorable terms.” The email also attached a
2 “comparison of vendor proposals,” which purportedly compared three e-commerce
3 firms that had offered “favorable terms” to manage Wealth Assistants’ clients’ stores.
4 But the only e-commerce firms actually identified in the “vendor proposals” were
5 “Quantum Ecom” and “Wholesale Universe,” which jointly offered a proposal. The
6 other “vendors” offering the proposal were anonymous. Notably, accepting the
7 “transition agreement” required waiving all claims against Wealth Assistants. (SAC,
8 ¶ 133); (Tawil Declaration, Exhibit A).

11 Wealth Assistants’ clients then began receiving unsolicited emails from Bonnie
12 Nichols, acting in her capacity as an agent of Wholesale Universe. Many of those
13 emails told the recipients that Nichols and Wholesale Universe were in possession of
14 inventory capital that Wealth Assistants had sent to Wholesale Universe on the email-
15 recipient’s behalf. (SAC, ¶ 139). However, when the recipients asked Nichols and
16 Wholesale Universe to send them the inventory capital that Wealth Assistants had
17 purportedly sent to Wholesale Universe on their behalf, Nichols and Wholesale
18 Universe refused to do so. (SAC, ¶ 141).

22 One of Nichols’ excuses for not providing the clients with the inventory capital
23 they paid for was that she did not have access to the clients’ Amazon stores. (SAC,
24 ¶ 137). But as Nichols now acknowledges in her motion, many of Wealth Assistants’
25 clients did not (and do not) have access to the Amazon stores that Wealth Assistants
26 purportedly set up for them, so Nichols knew that Wealth Assistants’ clients would
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1 not be able to provide Nichols with access to the online stores. (See MTD at 3, “WA
2 clients usually do not know this information [i.e., their stores’ login credentials]
3 because WA set up the accounts and did not cooperate in providing these crucial
4 details to the e-commerce stores, their clients, nor to Nichols and Wholesale
5 Universe.”).

7 The reality is that Nichols secretly did have access to the information she
8 needed to access the clients’ stores. Behind the scenes, she gathered login information
9 for the clients’ stores from Wealth Assistants. (SAC, ¶ 138; Stoops Declaration,
10 Appendix (showing screenshots of messages between Wholesale Universe, Quantum
11 Ecommerce, and Wealth Assistants about gaining access to clients’ stores); Tawil
12 Declaration, ¶10 (“Wholesale Universe and Quantum Ecom already had the
13 information they needed to access our online Amazon store. I did not need to provide
14 them with any information to access that store.”)). She refused to provide the clients’
15 stores with the inventory capital they had paid for not because she could not, but
16 because she preferred to keep the capital for herself.

17 Later on, Wholesale Universe informed many of its former clients that
18 Wholesale Universe would be taking a \$500 fee for each month that Wealth
19 Assistants’ former clients did not claim the inventory capital that Wholesale Universe
20 was purportedly holding for them. (SAC, ¶ 139).

21 **C. Declarations From Victims Evidence Nichols’ Fraudulent Scheme**

1 Shortly after Wealth Assistants went out of business, Plaintiff Michael
2 Nibarger received an email from Nichols stating that Wholesale Universe had
3 received \$5,000 of Nibarger's inventory capital from Wealth Assistants. (Nibarger
4 Declaration, ¶ 7). The email stated that Nibarger should contact Wholesale Universe
5 to receive the inventory. (Nibarger Declaration, ¶ 7). Nibarger then called Wholesale
6 Universe to request that the \$5,000 be refunded to him. (Nibarger Declaration, ¶ 8).
7
8 Wholesale Universe refused to refund Nibarger the \$5,000 and said that he could only
9 receive the \$5,000 as a credit towards an inventory purchase at Wholesale Universe.
10 (Nibarger Declaration, ¶ 9). Because making such a purchase would entail paying
11 Wholesale Universe substantial warehouse fees and shipping fees, and because
12 Nibarger did not trust Wholesale Universe or its partner Quantum Ecom, Nibarger
13 did not use the \$5,000 credit. (Nibarger Declaration, ¶ 9). As a result, he lost the
14 \$5,000 in inventory capital.
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18 Similarly, Plaintiff Amund Thompson received an email from Nichols stating
19 that Wholesale Universe was holding inventory for him. (Thompson Declaration,
20 ¶ 8). However, because Thompson did not wish to use Wholesale Universe's
21 services, his inventory capital disappeared. (Thompson Declaration, ¶ 9).
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24 Anthony Dias is another Californian who is a victim of Wealth Assistants.
25 Wholesale Universe sent him unsolicited correspondence after Wealth Assistants shut
26 down, offering to supply his store with inventory. (Dias Declaration, ¶ 9). Dias sent
27 \$20,000 as an inventory payment to Wholesale Universe, which promised to supply
28

1 his store with \$45,000 worth of specified inventory in return. (Dias Declaration, ¶
2 10). Months after Dias made the purchase, Wholesale Universe decided to hold his
3 inventory capital hostage. Specifically, Wholesale Universe told him it would not
4 supply the promised inventory until Dias wrote an email to Wholesale Universe
5 confirming that he had not realized that Wholesale Universe was a named defendant
6 in a lawsuit that Dias had filed against Wealth Assistants. (Dias Declaration, ¶ 11).
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9 After Dias sent the email Wholesale demanded, Wholesale Universe did
10 supply him with some inventory, but the inventory had a sale price of far less than the
11 promised \$45,000; Dias generated only about \$10,000 of revenue from selling most
12 of the inventory. (Dias Declaration, ¶ 12). Furthermore, when Amazon questioned the
13 authenticity of the inventory that Wholesale Universe had supplied to Dias, Nichols
14 and Wholesale Universe refused to provide any proof of authenticity, suggesting that
15 the inventory may have been counterfeit. (Dias Declaration, ¶ 13). As a result,
16 Amazon shut down Dias's store. (Dias Declaration, ¶ 13). Notably, Dias also suspects
17 that Wholesale Universe gave Quantum Ecommerce unauthorized access to Dias's
18 store. (Dias Declaration, ¶ 16-18).
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22 Chris Tawil is yet another Californian victim of Wealth Assistants who later
23 lost money to Wholesale Universe (in partnership with Quantum Ecommerce). After
24 Wealth Assistants shut down, Chris and his wife, Tarah Tawil, hired Quantum
25 Ecommerce in partnership with Wholesale Universe to manage their Amazon store
26 because Chris and Tarah did not know how to manage it themselves. They signed a
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1 contract to pay the partnership \$400 per month to manage the store. (Tawil
2 Declaration, Exhibit A). After signing the contract, they learned that Quantum
3 Ecommerce and Wholesale Universe already had access to their online Amazon
4 store; Chris and Tarah did not need to provide Quantum and Wholesale any login
5 information in order for Quantum and Wholesale to access Chris and Tarah's
6 Amazon store. (Tawil Declaration, ¶ 10).

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9 For several months, Chris and Tarah paid \$400 per month pursuant to the store-
10 management agreement with the Quantum-Wholesale partnership. (Tawil
11 Declaration, Exhibit A). But Chris and Tarah quickly realized that they were not
12 receiving any meaningful store-management services in return for their payments.
13 And the Quantum-Wholesale partnership did not seem above board; they told Chris
14 and Tarah to provide false banking information to Amazon, for example. In a word,
15 Chris and Tarah's experience with Wealth Assistants was repeating itself.
16
17 Accordingly, Chris and Tarah terminated their relationship with Quantum-Wholesale
18 in February of 2024. (Tarah Declaration, ¶ 16).

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21 In summary, Nichols and Wholesale Universe stole the inventory capital of
22 many of Wealth Assistants' former clients, including at least two Plaintiffs and many
23 other California residents. Nichols and Wholesale Universe did so by accepting
24 money from Wealth Assistants that was supposed to be held for those clients' benefit,
25 and then refusing to return that money to Wealth Assistants' former clients. That
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1 conduct constitutes targeting Californians in a fraudulent scheme, and it is sufficient
2 to subject Nichols and Wholesale Universe to the Court's personal jurisdiction.

3 **D. If The Court Is Inclined To Dismiss Any Of Plaintiffs' Claims, Plaintiffs**
4 **Should First Be Allowed To Conduct Jurisdictional Discovery**

5 The Court has broad discretion to permit jurisdictional discovery, which
6 "should ordinarily be granted where 'pertinent facts bearing on the question of
7 jurisdiction are controverted or where a more satisfactory showing of the facts is
8 necessary.'" *Butcher's Union*, 788 F.2d 535, 540 (9th Cir. 1986). The Court may only
9 deny jurisdictional discovery if "it is clear that further discovery would not
10 demonstrate facts sufficient to constitute a basis for jurisdiction." *Wells Fargo & Co.*
11 *v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977), or when the
12 request is "based on little more than a hunch that it might yield jurisdictionally
13 relevant facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008).
14

15 Here, without the benefit of any jurisdictional discovery, Plaintiffs have
16 submitted four declarations from California residents who have attested that they lost
17 tens of thousands of dollars because of Nichols' and Wholesale Universe's fraudulent
18 acts specifically aimed at those Plaintiffs. Additional jurisdictional discovery would
19 almost certainly demonstrate an even stronger connection between California and the
20 defendants.
21

22 **CONCLUSION**

23 For the reasons discussed above, Plaintiffs respectfully request that the Court
24 deny Defendants' motion to dismiss in its entirety. If the Court finds that Plaintiffs have
25

1 not yet shown that Defendants are subject to the Court's jurisdiction, then Plaintiffs
2 respectfully request the opportunity to conduct jurisdictional discovery.

3 Dated: December 20, 2024
4

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WORD COUNT COMPLIANCE CERTIFICATION

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains fewer than 7,000 words, which complies with the word limit of L.R. 11-6.1

/s/Nico Banks

Nico Banks

Dated: December 20, 2024

CERTIFICATE OF SERVICE

On December 20, 2024, I served this brief and accompanying papers via first-class mail to the parties listed below with addresses below their names, and via email to the parties with email addresses below their names:

Wholesale Universe and Bonnie Nichols
c/o Brand Geyer, Esq.
bradford.geyer@formerfedsgroup.com

I declare under penalty of perjury under the laws of the State of California that the foregoing statements in this Certificate of Service are true and correct.

/s/Nico Banks

Nico Banks

Dated: December 20, 2024